IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 456 OF 2006
WITH
CRIMINAL APPLICATION NO. 486 OF 2006

Kiran Kannu Kharwa ..Appellant

versus

State of Maharashtra ..Respondents

Mr. Ganesh Gole for the Appellant.

Mrs. V. R. Bhosale, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
S. A. BOBDE,JJ.

DATE : 7TH JUNE, 2006

ORAL ORDER :

1. Heard learned counsel for the appellant and the learned APP for the State.

2. In the above appeal, the appellant has filed application for bail. When the application for bail was being heard, learned counsel for the appellant - accused contended that looking to the facts and circumstances, the conviction of the accused under Section 302 cannot be maintained and it can be at the most a case under Section 304 Part II. He

further stated that even according to the prosecution, the accused was suspecting the character of his wife, he saw her with somebody else, he became angry and dragged her from the place by staircase of the railway and while she was being dragged, accused was assaulting her with fists and kick blows, as a result of which she sustained injuries described by the trial court in paragraph 20 of the judgment. There are 12 injuries, most of which are contusions, which could be by dragging of the victim by the iron staircase and also by assault, therefore, he contended that if conviction in the circumstance is altered from Section 302 to Section 304 Part II, his purpose will be served. He also pointed out that the accused is in custody since March 1999. He has completed 7 years sentence and therefore looking to the fact that Section 304 Part II prescribes maximum sentence of ten years, the accused can be set at liberty by the sentence already undergone.

3. Learned APP also contended that there could not be any intention to kill, in the circumstances, and, she left the matter at the discretion of the Court.

4. We have perused the judgment, the contentions raised by the Counsel for the Appellant - accused getting support from the judgment, and, therefore, in our opinion, the conviction of the accused under section 302 cannot be maintained. In the result, we pass the following order:

ORDER

. Appeal is partly allowed.

. Conviction of the Appellant - accused under Section 302 of the IPC is set aside. He is acquitted of the said charge. However, he is convicted under Section 304 Part II of the IPC and is sentenced to suffer R.I. for seven years and to pay a fine of Rs.3,000/- in default R.I. for one month. The accused is in custody. If he has already completed the sentence, he be set at large if not required in any other case.

. In view of this order, bail application does not survive, the same also stands disposed of.

(D.G. DESHPANDE, J.)

(S.A. BOBDE, J.)